IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3819 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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SURESHKUMAR RAMANLAL BEJALIWAL

Versus

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Appearance:

1. Special Civil Application No. 3819 of 2002

MR TR MISHRA for Petitioner No. 1

MR SP HASURKAR for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/07/2002

ORAL JUDGEMENT

#. Rule returnable today. Mr.Hasurkar waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. This Court (Coram: H.K.Rathod,J) by its order dated 10.5.2002 directed by way of interim direction to reinstate the petitioner workman in service forthwith. Accordingly, it is not in dispute that the petitioner is already reinstated in service. However, Mr.Hasurkar pointed out that, against that order, the Board has preferred appeal, but no interim relief is granted by this Court in Letters Patent Appeal. The present petitioner was appointed by order dated 17.10.2001 on the post of Helper against reserved vacancy in the pay scale of Rs.2750 - 5215. Thereafter, the respondent Board gave him the show cause notice, as to why his services should not be terminated on the ground that, the petitioner has not cleared All India Pre Test Service Examination and ultimately on that ground, it was decided by the Board to terminate the services of the petitioner.

#. It is argued by Mr.Mishra that, at the time of his appointment, no such condition was prescribed in the appointment order and he was selected by the Board without insisting upon the said condition, even though, the Board was aware that the petitioner was not holding such requisite qualification at the relevant time at the time of his appointment. He further submitted that, since his AP-3 form was not sent to the apprentice board by the respondent, it was not possible for the petitioner, therefore, to appear in the said test. He further submitted that, it was the duty of the board to send such form to the apprentice board. It is also argued by Mr.Mishra that, since the petitioner was appointed as helper and not as a line-man, therefore, it is not necessary for him to pass such examination.

#. On behalf of the Board, Mr.Hasurkar submitted that, even though, no such condition was prescribed in the appointment order, yet the petitioner was required to pass the said test, as, at the time of petitioner's appointment as apprentice, the petitioner was required to pass such test. It is also submitted that, even if the petitioner is appointed as helper, then also he is required to pass such examination. It is also submitted by Mr.Hasurkar that, as per the provisions of the Apprentice Act, such examination is required to be passed.

#. During the course of hearing, a suggestion was made on behalf of the petitioner that, if the petitioner is allowed to be continued in service as helper, he may appear in the examination and at least he may be given two chances for clearing the said examination. In

response to the said suggestion, Mr.Hasurkar, learned advocate, submitted that, such pre-test examination is taken every six months. On behalf of the board, Mr.Hasurkar, clearly submitted that the board will have no objection to allow the petitioner to appear in the aforesaid test provided that the petitioner passes such examination within two trials. Under these circumstances, the following directions are given.:

(i) The respondent board shall continue the present petitioner on his original post of helper and reinstatement order may be passed on or before 1.8.2002.

(ii) On being appointed on the said post, the petitioner will clear the aforesaid pre-test examination within two chances and in order to see that the petitioner is permitted to appear by the apprentice board, the board will cooperate in the fullest manner and whatever the document including AP-3 form which are required to be submitted to the apprentice board, the board will submit the same.

#. Mr.Mishra has also assured the Court that the petitioner will try to clear the aforesaid examination within the stipulated chances. In that view of the matter, it is clarified that, in case, the petitioner failed to clear the aforesaid examination within two chances, it will be open for the Board to take appropriate action in accordance with law for the purpose of terminating his services. It is clarified that, this order is passed in the facts and circumstances of the present case and the same shall not be treated as precedent in any other future cases. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Mr.Hasurkar has assured the Court that the Board will comply with this order and will reinstate the petitioner latest by 1.8.2002. In view of the said assurance of Mr.Hasurkar, ad-interim relief granted earlier stands vacated. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)